

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1351 of 1996

with

SPECIAL CIVIL APPLICATION No 7669 of 1996

to

SPECIAL CIVIL APPLICATION No 7672 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

H U BABI

Versus

CONSERVATOR OF FOREST

Appearance:

MR YS LAKHANI for Petitioners

MR D.Y. MANKAD, AGP, for respondent.

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 09/10/96

ORAL JUDGEMENT

Rule. Service of rule is waived by learned A.G.P. Mr Mankad for the respondent.

In this batch of five petitions under Article 226 and 227

of the Constitution of India, the petitioners have questioned the legality and validity of the award of Labour Court at Junagadh dated 26.10.94, in so far as it pertains the rejection of claim of 75 percent of backwages to them.

Since all these petitions raise identical question and arising out of a common award of the Labour Court, they are being disposed of by this common judgment.

The petitioners were working with the respondent authority from July 1981 to July 1984 on continuous service as daily wagers. Their services came to be terminated without following the requisite legal procedure. Therefore, they approached the Assistant Labour Commissioner, Porbandar, for reference of the dispute to the Labour Court.

After examining the evidence on record and considering the relevant proposition of law, the Labour Court, at Rajkot, partly allowed the reference and held that :

- (1) the action of the respondent authority in terminating the services of the petitioners is illegal and without observing the legal procedure prescribed under section 25F and 25H of the Industrial Disputes Act, 1947 (ID Act) as the petitioners had completed 240 days of service.
- (2) the petitioners should be reinstated in service within 30 days from the date of the order granting continuity of service; and
- (3) awarded 25 per cent of the backwages.

It could very well be seen from the order of the Labour Court that backwages are awarded only to the extent of 25 per cent and rejected the claim of the petitioners for the remaining 75 per cent of the backwages. The contention advanced in this group of petitions is that no reasons are assigned for granting only backwages to the extent of 25 per cent and therefore, that part of the order is illegal. In short, the only contention which is advanced in this group of petitions is that the Labour Court ought to have awarded full backwages.

After having examined the facts and circumstances emerging from the present case and having heard the learned counsel for the parties, this Court has no hesitation in finding that there is no fit and

appropriate case warranting interference of this Court in a petition under Article 226/227 of the Constitution of India wherein the jurisdictional scope is very much limited. It cannot be contended that reasons are not assigned for awarding backwages only to the extent of 25 per cent. Reasons are assigned in para 6 of the award. Apart from that, it is the discretion of the Court. Of course, such a discretion has to be exercised judiciously and taking into account all the facts and circumstances of the case. The Labour Court has considered all the relevant facts and circumstances of the case while refusing or not awarding 75 per cent of backwages. Therefore, it cannot be contended that discretion exercised by the Labour Court while passing the impugned order awarding only 25 percent of the backwages is in any way unjust or perverse requiring interference of this Court while exercising extra ordinary, special, prerogative, equitable writ jurisdiction. If it is not found that discretion is exercised illegally without any material on record or without considering the facts and circumstances, then in that case, no interference can be made in a petition under Article 226/227 of the Constitution of India. This proposition of law is very well expounded, explained and enunciated in many judicial pronouncements of the Apex Court. In the case of Union of India v. Jayakumar Parida, (1996) 1 SCC 441, while upholding the quashing of termination without backwages, it was held that it was in exercise of discretion. Thus if the discretion while awarding or refusing backwages is exercised properly, the writ court ordinarily would be at loath to interfere with such an order. Similarly, the Apex Court in the case of Chairman, Governing Council, Anjuman Arts, Commerce and Science v. Sayyed Mohd. Safi, (1996) 2 SCC 69 has also held that it is a matter of discretion to grant or refuse backwages and that the Court has to consider all the facts and circumstances emerging from the record and has to exercise its discretion.

In view of the facts and circumstances emerging from the record of the present case and considering the settled proposition of law and bearing in mind the circumscribed and limited scope in a writ petition under Article 226/227 of the Constitution of India, this Court has no hesitation in finding that the impugned award is justified and there is no fit case for interference. Therefore all the five petitions are required to be rejected and accordingly, they are rejected. Rule discharged.

.....

